



## Non-Competitive Procurement Agreements for Common Locate Service Providers for Toronto Water and Transportation Services Divisions.

**Date:** October 22, 2019

**To:** Infrastructure and Environment Committee

**From:** General Manager, Toronto Water; General Manager, Transportation Services;  
Chief Purchasing Officer

**Wards:** All

### SUMMARY

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The purpose of this report is to seek delegated authority for the General Managers of Toronto Water and Transportation Services (the “General Managers”) to negotiate and, where such negotiations are successful, to enter into and execute agreements with locate service providers for such locate services as may be required from time to time to meet the City’s obligations under the Ontario Underground Infrastructure Notification System Act, 2012 (“the Act”), provided that the terms and conditions of such agreements are acceptable to the General Managers and within their respective budgets and in form(s) satisfactory to the City Solicitor.

Further, the purpose of this report is to also seek authority to procure such locate services through the Locate Alliance Consortium's (“LAC”) Request for Proposals (“RFP”) process, if and when the General Managers consider the terms and conditions are beneficial to the City.

The City is a member of LAC and has utilized LAC’s RFP process over the past several years to procure locate services. The current two agreements that the City has for locate services expire on January 31, 2020.

Both Toronto Water and Transportation Services have benefited from utilizing the past LAC RFP process. These benefits include: better pricing from economies of scale, coordination of locate services with other LAC members and standardized process and quality control and other efficiencies which result in overall improved response times and improved customer service.

Utilizing the current pricing under the LAC RFP process, the estimated cost for locate services for the period of February 1, 2020 to January 31, 2021 would be \$3,079,406, net of Harmonized Sales Tax (HST) recoveries, in aggregate for both divisions. For the period of February 1, 2020 to January 31, 2024, the estimated cost would be \$13,043,281, net of HST recoveries, in aggregate for both divisions. Costs for such

services will be within the Approved Operating and Approved Capital Budgets for each division.

City Council approval is required in accordance with Municipal Code Chapter 195- Purchasing, where the current non-competitive procurement request exceeds the Chief Purchasing Officer's authority of the cumulative five year commitment limit under Article 7, Section 195-7.3 (D) of the Purchasing By-Law or exceeds the threshold of \$500,000 net of Harmonized Sales Tax allowed under staff authority as per the Toronto Municipal Code, Chapter 71- Financial Control, Section 71-11A.

## **RECOMMENDATIONS**

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The General Manager, Toronto Water, the General Manager, Transportation Services and the Chief Purchasing Officer, Purchasing and Materials Management Division recommend that:

1. City Council authorize the General Manager, Toronto Water and the General Manager, Transportation Services to:

a. negotiate and, where such negotiations are successful, enter into and execute agreements with locate service providers for such locate services as may be required from time to time to meet the City's obligations under the Act, including any amendments or renewals thereof, provided that the terms and conditions of such agreements are acceptable to the General Manager, Toronto Water and the General Manager, Transportation Services, and within their respective budgets and in form(s) satisfactory to the City Solicitor.

b. procure such locate services through the Locate Alliance Consortium's RFP process, if and when the General Manager, Toronto Water and the General Manager, Transportation Services, consider the terms and conditions are beneficial to the City and within their respective budgets.

2. City Council authorize the General Manager, Toronto Water and the General Manager, Transportation Services to negotiate, enter into and execute Alternate Locate Agreements ("ALA"s) from time to time, with such public utility owners and upon such terms and conditions as the respective General Managers consider appropriate, and in a form acceptable to the City Solicitor.

## **FINANCIAL IMPACT**

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The funding for the estimated 2020/2021 cost for locate services will be included in the respective Toronto Water and Transportation Services capital and operating budgets for the initial 12 month period. The estimated cost for this period is \$3,079,406, net of HST recoveries, with approximately \$1,925,699 allocated to Toronto Water costs and approximately \$1,153,707 allocated to Transportation Services costs, based on estimated demand and projected costs for the services during this period. This would allow Toronto Water and Transportation Services to join the terms of the existing LAC contract that will expire in January 2021.

It is contemplated that the City would meanwhile also join the next LAC RFP process for a multiyear contract starting February 1, 2021, possibly for another three year period ending Jan 31, 2024. The terms of the new contract(s) are not known at the present, but based on the current pricing under the LAC RFP process, costs for locate services for the next three years are estimated at \$9,963,387 net of HST recoveries, with a similar annual operating and capital budget allocation between divisions as in the first year.

Overall, Toronto Water and Transportation Services staff project that the estimated cost for locate services for the next four years ending January 31, 2024 will be \$13,043,281, net of HST recoveries.

It should be noted that any locate services agreements to be negotiated, entered into and executed based on the recommendations in this report will have to be within Toronto Water and Transportation Services respective capital and operating budgets.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

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On February 10 and 11, 2015, City Council adopted the December 16, 2014 report from the Executive Director, Engineering and Construction Services PW1.3 Staff Report which included a number of recommendations to reduce traffic congestion as a result of all City-led water, sewer and road construction projects.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.PW1.3>

On July 7, 8 and 9, 2015, City Council adopted the June 1, 2015 Report from the General Managers of Toronto Water and Transportation Services (the "General Managers") PW6.5 - Council consideration dated July 7, 2015 to take such actions as they deem appropriate to enroll the City as a member of the LAC and that the respective General Managers or their designate(s) represent the City for such purposes at any meetings of LAC.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.PW6.5>

City Council also authorized and directed the General Managers to negotiate with and, where such negotiations are successful, enter into and execute a locate service provider agreement with the current LAC preferred locate services proponent for Toronto.

On January 18, 2017, Council adopted the January 12, 2017 report from the Director, Purchasing and Materials Management BA4.1 - Bid Award Panel consideration dated January 18, 2017 which included the recommendation to allow Toronto Water and Transportation Services to enter into contract with PVS Contractors and Promark-Telecon (LSPs serving the City west and east of Yonge St. respectively), using the LAC's Request for Proposal process.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.BA4.1>

## COMMENTS

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### **Procurement of Common Locator within "LAC"**

In June 2012, the Province of Ontario enacted the Ontario Underground Infrastructure Notification System Act, 2012, deeming any person or entity that owns or operates underground infrastructure in the Province of Ontario to be a member of the provincially regulated Ontario One Call Corporation and, subject to certain obligations, to provide information and the location of its underground infrastructure.

Ontario One Call provides information to excavators about the location of underground infrastructure. When a member of Ontario One Call receives information about a proposed excavation or dig, the Act requires the member to mark the location of its underground infrastructure that may be affected by the excavation or dig, or indicate that its underground infrastructure will not be affected by the excavation or dig. The Act also requires excavators to obtain information respecting underground infrastructure before beginning an excavation or dig. The Act creates offences for failure to comply with the Act or regulations made under it.

The demand created by the new Act for multiple locate services at a construction site has resulted in delays in construction due to the piecemeal manner in which locates are provided with many underground infrastructure owners and/or operators providing separate locates. As noted in the December 16, 2014 and in the June 1, 2015 reports, construction projects within the City's road right-of-ways have experienced considerable delays.

On February 1, 2017, City Council authorized the City to join LAC, and authorized Toronto Water and Transportation Services to enter into agreements with successful proponents under the LAC RFP process.

The current contracts between the City and the two locate service providers for Toronto Water and Transportation Services underground infrastructure expire on January 31, 2020. Toronto Water and Transportation Services require City Council authority to procure locate provider services after January 31, 2020.

### **Alternate Locate Agreements ("ALAs")**

ALAs have been utilized by owners of underground infrastructure (generally utilities) to allow a party to enter into an agreement to excavate in the vicinity of the other party's underground infrastructure, subject to certain parameters and conditions, without the need to obtain a locate from the utility or other underground infrastructure owner. The time, cost and necessity of a locate is dispensed with as any risk of injury or damage is avoided due to the parameters and conditions of excavation. Toronto Water and Transportation Services seek authority to enter into ALAs with qualified utilities and their approved contractors, subject to certain parameters and conditions such as daylight excavations utilizing hand digging and/or hydro vac. The City will not incur any costs for entering into this type agreement, but will instead benefit from having thousands of locates per year removed from Ontario One Call processing administration and related

fees to the City. The excavating party utilizing the ALA bears the cost and liability of excavation under such agreements.

ALAs allow an excavating party to excavate and perform location of underground services as and when they require, providing them time savings and schedule flexibility in their operations, without the need to wait upon a locate by the underground infrastructure owner. Whenever a project requires multiple locates over several periods of time and/or areas, the timing of obtaining locates can be problematic for excavator's operations.

### **Common Locate Service Provider (LSP)**

The City is required to provide location of its underground infrastructure in accordance with the Ontario Underground Infrastructure Notification System Act, 2012, S.O. 2012, c. 4 (the "Act") and, to comply with the City's obligations, Toronto Water and Transportation Services need to procure the services of locate providers for this purpose.

The purpose of this report is to seek delegated authority for the General Managers to negotiate and, where such negotiations are successful, to enter into and execute agreements with locate service providers for such locate services as may be required from time to time to meet the City's obligations under the Act, provided that the terms and conditions of such agreements are acceptable to the General Managers and within their respective budgets and in form(s) satisfactory to the City Solicitor.

Further, the purpose of this report is to also seek authorization to procure such locate services through the LAC's RFP process, if and when the General Managers consider the terms and conditions are beneficial to the City.

As a member of LAC , the City can utilize LAC's RFP which has offered the City a number of benefits to date including: better pricing from economies of scale, coordination of locate services with other LAC members and standardized process and quality control which result in overall improved response times and improved customer service.

The current two agreements that the City has for locate services expire on January 31, 2020.

Both Toronto Water and Transportation Services have benefited from utilizing the past LAC RFP process. These benefits include: better pricing, coordination of locate services with other LAC members and standardized process and quality control and other efficiencies which result in overall improved response times and improved customer service.

Another major benefit of a coordinated approach with other LAC members is that, generally, all necessary locates can be undertaken by the service provider for all LAC members with underground infrastructure in the area in one attendance rather than construction operations having to wait until the individual locate provider for each of the affected utilities has attended.

This coordination has resulted in a reduction of the overall cost to the City of providing locates as well as a reduction in construction costs arising from delays.

### **Locate Alliance Consortium (LAC)**

The Locate Alliance Consortium in Ontario consists of facility owners including, Alectra Utilities, Bell Canada, Cardinal Power of Canada L.P., City of Toronto, Elexicon (Veridian Connections & Whitby Hydro merged), Enbridge Gas Distribution, Greater Sudbury, Hydro One, Hydro Ottawa, London Hydro, Oshawa PUC, Toronto Hydro, Town of Ajax, Union Gas Ltd. an Enbridge Company, and Westario Power. The Locate Alliance Consortium is open to any facility owner within the Province of Ontario.

The following are the key objectives of the Locate Alliance Consortium:

- 1) To improve public and employee safety;
- 2) To reduce damage to infrastructure;
- 3) To improve locate service levels;
- 4) To increase efficiencies for locate service providers and facility owners;
- 5) To further promote the “One Call – One Locate” strategy.

The Locate Alliance Consortium works together to standardize terms/conditions to ensure consistent service and quality with regards to locate services.

To procure locate services, LAC issues an RFP setting out certain terms and conditions upon which proponents provide bids. Through this process, LAC selects a preferred proponent for geographic areas throughout Ontario and each LAC member may choose to conduct final negotiations with the preferred proponent(s) for their area and, where the negotiations are successful, enter into a locate services agreement. A sample locate services agreement is attached to the RFP.

Both Toronto Water and Transportation Services have benefited from the City’s membership in LAC including:

- Improved Customer Service (construction sector and the public)
- Standardized Locate completion process for all utilities
- Optimized response times and meet legislated compliance requirements
- Single procurement process for several utility owners
- Better value and servicing quality to TW and TS
- Customers receive all LAC members' utilities locates at the same time
- Minimized traffic incursions on major roads
- Interdivisional Partnership between TW and TS
- Internal City efficiency in administering program.

More details can be seen at the Consortium's website: <http://locatealliance.com/>

## Challenges

The current method of procuring locate services has been to seek City Council authority on an annual or bi-annual basis. Given the short time period, it is challenging for staff to undertake negotiations and arrive at an agreement. Additionally, this timeframe does not always align with the LAC issuance of its RFP or contractual adjustments required midterm. As the City has regulatory obligations to provide locates within a short period of time, it is essential that Toronto Water and Transportation Services have locate services secured on a timely basis. Delegation of the authority to procure these services to the General Managers will allow Toronto Water and Transportation Services to join in the LAC RFP process, as and when it is undertaken and as long as it is beneficial to the City, and the flexibility in the length of its locate service provider agreements. This flexibility will also assist the City to meet any changing demands for locate services.

In brief, the provision of locates is a provincially mandated ongoing service that underground infrastructure owners are required to provide. The proposed delegation of authority to the respective divisions would enable staff to manage these ongoing services in a manner consistent with customer needs.

The Fair Wage Office administers the Fair Wage Policy that prohibits the City from doing business with contractors and suppliers who discriminate against their workers. The City of Toronto requires that wages paid to workers on City contracts meet the requirements of the Fair Wage Policy, as applied by City contracts and labour trade contractual obligations in the construction industry as legislated by the province of Ontario.

As required, and as part of any future negotiations to establish Agreements with relevant vendors related to this authority, the vendors will be required to review and understand the Fair Wage Policy and Labour Trades requirements and will have to comply fully.

## **CONTACT**

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Kamal Sangha, Manager, Customer Care Support, Toronto Water, Tel: (416) 338-0635  
[Kamaldeep.Sangha@toronto.ca](mailto:Kamaldeep.Sangha@toronto.ca)

James Chandler, Manager, Traffic Management Centre, Transportation Services, Tel:  
(416) 392-5314 [James.Chandler@toronto.ca](mailto:James.Chandler@toronto.ca)

Jacque Breen, Manager, Corporate Purchasing Policy & Quality Assurance  
Purchasing & Materials Management Tel: (416) 392-0387 [Jacquie.Breen@toronto.ca](mailto:Jacquie.Breen@toronto.ca)

## **SIGNATURE**

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Lou Di Gironimo, General Manager, Toronto Water

Barbara Gray, General Manager, Transportation Services

Michael Pacholok, Chief Purchasing Officer, Purchasing & Materials Management